

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2591 of 2017

Arising Out of PS.Case No. -182 Year- 2003 Thana -LAKHISARAI District- LAKHISARAI

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1. Bambam Singh, Son of Ballam Singh, Resident of Village- Babhangama,
P.S.+District- Lakhisarai.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Adv.
: Mr. Rajesh Kumar, Adv.
: Mr. Arun Kumar Pandey, Adv.
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-07-2018

Appellant Bambam Singh has been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo R.I for 5 years as well as to pay fine appertaining to Rs. 5,000/- in default thereof, to undergo R.I for 3 months additionally, vide judgment of conviction dated 10.08.2017 and order of sentence dated 11.08.2017 passed by learned Fast Track Court No. 1, Lakhisarai in Sessions Trial No. 411/2005.

2. Sudhir Singh (PW-5) gave his fard-beyan on 21.07.2003 at about 5.30 P.M at the clinic of Dr. Himkar, Lakhisarai before police official of Lakhisarai disclosing therein that his two decimal land lies by the side of his residential house whereupon, his neighbour Ballam Singh along with his two sons namely Bambam Singh & Raushan Singh had encroached by way of stocking bricks



over the same. Today at about 3.00 P.M, while he was removing the bricks stocked by them, at that very moment Ballam Singh along with his two sons came, abused and on his protest, Ballam Singh ordered his sons to kill. Then thereafter, all of them, gone to their house and returned back with rifle, pistol. Ballam Singh and Raushan Singh were armed with big weapon while Bambam Singh armed with small weapon. All of them began to fire upon him with an intention to kill and during course thereof, the firing made by Bambam Singh shot at over his back causing injury as a result of which, he fell down. After hearing sound of firing as well as his alarm, his brother along with others including Bipin Singh, Jairam Singh, Nunnulal Singh, Sunil Singh came seeing whom, the accused person fled away. Then, thereafter, he was lifted to clinic of Dr. Himkar where, he is being treated.

3. After registration, Lakhisarai P.S. Case No. 182/2003, investigation was taken up and, completing the same, charge-sheet has been submitted against all the accused whereupon, trial commenced. From the judgment impugned, it is apparent, that case of co-accused Roshan was bifurcated after having been identified as a juvenile while co-accused Ballam Singh has been acquitted. Only, the appellant Bambam Singh has been found guilty and sentenced therefor in a manner as indicated above, subject matter of



instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 6 PWs, who are PW-1, Chhotu Kumar, PW-2, Bipin Singh, PW-3, Babhikhan Prasad, PW-4, Janardan @ Janardan Singh, PW-5, Sudhir Singh and PW-6, Dr. Himkar. Side by side, had also exhibited, injury report as Ext.1. As stated above, nothing has been adduced in defence.

6. Now coming to the evidence available on the record, it is evident that PW-1, PW-2, PW-3 and PW-4 have not identified the appellants to be assailants of the informant, PW-5. Now, the evidence of PW-5 is to be seen. During course of evidence, PW-5 had stated that occurrence is about 11 years ago. It was 3 P.M. occurrence took place over the land lying by the side of his house. At that very time, he was removing bricks from the land which belonged to him as well as accused persons. While he was removing bricks, during midst thereof, Raushan Singh, Bambam Singh and Raj Ballav Singh came and fired. The firing made by Bambam Singh strike over his back as a result of which, he fell down. He was taken to the clinic



of Dr. Himkar where police came and recorded his fard-beyan over which, he had put his left thumb impression. Balmiki Singh and Bipin Singh had put their signature. During cross-examination at Para-6 had stated that he had got dispute with accused persons relating to the land. That land belongs to him but, his patidar had taken the same. The land has been encroached by his Pattidars. They have fenced the land. He has got half share in the land. The land happens to be ancestral one. 6-7 Pattidar's share the same. He is unable to disclose Khata, Khesra number. His co-sharer have also grabbed his land. The land is not in his possession. This land was being used by accused Raushan Singh and others according to their choice. He had further admitted at Para-7 that the land has been sold in favour of Raushan Singh. He is unable to disclose the boundary of the land. He had pointed out the P.O. to be the same. In Para-8, he had disclosed the boundary of P.O as North- Uma singh, South-Piro Singh, East-he himself and West-disputed land. At Para-10, he had stated that at the time of occurrence, none was present. Only he along with his brother was there. He was taken to Lakhisarai by his brother and one from Ramnagar and two others from Babhangama. Then had denied the suggestion at Para-12 that only to disturb the possession of accused persons this case has been falsely instituted after sustaining injury at different place in different manner.



7. PW-6 is the doctor, who had examined the injured Sudhir Singh on 21.07.2013 at about 7.30 P.M and found the following:

i. Wound of entry lacerated wound of about 1/4” in diameter over right side of back of chest about 1” (Right) to Dorsal spine.

ii. Margin of wound was inverted and there was severe bleeding from the wound.

iii. Age of injury- within six hours.

8. Caused by firearms and was opined grievous in nature. During course of cross-examination, it is evident that nothing substantial has been explicated from his mouth.

9. After parallel scrutiny of the judgment impugned in consonance with the material available on the record, it is evident that I.O. has not been examined. Because of the fact that I.O. has not been examined on account thereof, the actual P.O has become under controversy. More particularly, in the background of the fact that informant PW-5 himself admitted that the land under dispute happens to be under the possession of the accused persons having duly fenced. Not only this, in Para-7, he had pointed out aforesaid piece of land to be the P.O while under Para-8 of his cross-examination he had identified the P.O. otherwise than aforesaid land suggesting boundary



North-Uma Singh, South-Piro Singh, East-his own land and West-disputed land. That means to say an independent strip of land was lying than the disputed land of the informant while, during course of examination-in-chief, he had asserted that while he was removing brick particles from the P.O land, he was shot at. Apart from this, from his cross-examination at Para-10, he had shown presence of his brother at the place of occurrence along with him while his brother PW-2 had not supported the case of the informant. At least, identifying the appellant to be the assailant.

10. Furthermore, it is evident from the judgment impugned that the learned lower court had acquitted the appellant for an offence punishable under Section 27 of the Arms Act observing that “however, no evidence has come whether firearm which was used by the accused in the occurrence was pistol, revolver or whether it was licensed or unlicensed so, accused Bambam Singh could not be convicted under Section 27 of the Arms Act. From Section 27 of the Arms Act, it is apparent that no such kind of requirement happens to be and for that, it looks desirable to incorporate Section 27 of the Arms Act which reads as follows :-

27. Punishment for using arms, etc.—

(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.



(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.]

11. From Section 27 (3) of the Arms Act, it is apparent that whatever confusion, the learned lower Court had perceived during course of appreciation of legal point with regard to application of Section 27 of the Arms Act was not at all warranted. Had there been proper appreciation at the end of the learned lower Court. Be that as it may, the finding has not been challenged at the end of the prosecution whereupon, that has become final. That means to say, when the appellant has not been found guilty under Section 27 of the Arms Act, then in that circumstance, assault by means of firearms would be a controversial point. Moreover, from the evidence of informant himself, it is evident that land had already been purchased by the accused persons since before the occurrence, land was under possession of the accused persons since before the occurrence, then in that circumstance, it was the informant who had gone over the land without any legal right and so at least would have justified his legal right by means of cogent, reliable, legal evidence wherein he failed. He had failed to such extent that he shown his inability to disclose



Khata-Khasra number of the P.O. In the aforesaid background as well as in the background of the fact that I.O. has not been examined whereupon, cast doubt over the authenticity of the prosecution version and so, it did not justify the finding recorded by the learned lower Court.

12. Consequent thereupon, same is set-aside. Appeal is allowed. Appellant is under custody. Hence is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Ranjeet/Amjad

AFR/NAFR	AFR
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